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SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-73988; File No. SR-Phlx-2014-81)

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Regarding the Extranet Access Fee

January 5, 2015

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on December 23, 2014, NASDAQ OMX PHLX LLC (“Phlx” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend section VIII (NASDAQ OMX PSX<sup>3</sup> Fees) of the Exchange’s Pricing Schedule entitled “Extranet Access” (“Pricing Schedule”), as well as to clarify the applicability of the Extranet Access Fee and thereby conform it to the equivalent fee of other markets.

While changes to the Pricing Schedule pursuant to this proposal are effective upon filing, the Exchange has designated that they become operative on January 2, 2015.

The text of the proposed rule change is available on the Exchange’s website at <http://nasdaqomxphlx.cchwallstreet.com/>, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> PSX is a facility of Phlx.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposal is to amend section VIII of the Exchange's Pricing Schedule, as well as to clarify the applicability of the Extranet Access Fee and thereby conform it to the equivalent fee of another market. This will conform the Exchange's Pricing Schedule to that of other markets.<sup>4</sup>

Specifically, the Exchange proposes to modify section VIII of the Pricing Schedule to rename Extranet Access as Extranet Access Fee and indicate that certain non-Exchange Customer Premises Equipment ("CPE") Products shall be assessed a monthly access fee of \$1,000 per CPE. The Exchange also proposes to conform the Extranet Access Fee to that of another market, specifically NASDAQ Rule 7025, by also indicating that if an extranet provider uses multiple

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<sup>4</sup> The Exchange, NASDAQ OMX BX, Inc. ("BX"), and The NASDAQ Stock Market ("LLC") are self-regulatory organizations ("SROs") that are wholly owned subsidiaries of The NASDAQ OMX Group, Inc. ("NASDAQ OMX"). NOM (a facility of the Exchange [sic]), BX, BX Options (a facility of BX), Phlx, and PSX (a facility of Phlx) (together with the Exchange known as the "NASDAQ Markets"), intend to independently file proposals to conform their respective Extranet Access Fee rules to NASDAQ Rule 7025.

CPE Configurations<sup>5</sup> to provide market data feeds to any recipient the monthly fee shall apply to each such CPE Configuration; and that no Extranet Access Fee will be charged for connectivity to market data feeds containing only consolidated data, which includes data disseminated by the Unlisted Trading Privileges Securities Information Processor (“UTP SIP”). This proposal conforms the Extranet Access Fee on PSX in section VIII of the Pricing Schedule to the equivalent fee in NASDAQ Rule 7025.

The Extranet Access Fee was introduced a decade ago on NASDAQ Rule 7025.<sup>6</sup> The Extranet Access Fee was introduced about a year ago on PSX in section VIII of the Pricing Schedule, but free of charge.<sup>7</sup> By this proposal, the Exchange normalizes the cost and structure of its Extranet Access Fee to that of the equivalent decade-old NASDAQ fee.

Section VIII of the Pricing Schedule currently indicates that extranet providers that establish a connection with the Exchange to offer direct access connectivity to market data feeds shall not be assessed a monthly access fee per recipient Customer Premises Equipment (CPE)

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<sup>5</sup> As defined in section VIII of the Pricing Schedule, a “Customer Premises Equipment Configuration” means any line, circuit, router package, or other technical configuration used by an extranet provider to provide a direct access connection to NASDAQ [sic] market data feeds to a recipient’s site.

<sup>6</sup> See Securities Exchange Act Release Nos. 50483 (October 1, 2004), 69 FR 60448 (October 8, 2004) (SR-NASD-2004-118) (establishing the Extranet Access Fee on NASDAQ); and 71199 (December 30, 2013), 79 FR 686 (January 6, 2014) (SR-NASD [sic]-2013-159) (notice of filing and immediate effectiveness increasing the Extranet Access Fee to \$1,000).

<sup>7</sup> See Securities Exchange Act Release No. 71236 (January 6, 2014), 79 FR 1906 (January 10, 2014) (SR-Phlx-2014-01) (notice of filing and immediate effectiveness establishing the Extranet Access Fee on PSX, and clarifying that no fee is charged at the time of the filing). The Extranet Access Fee was also established on BX. See Securities Exchange Act Release Nos. 59615 (March 20, 2009), 74 FR 14604 (March 31, 2009) (SR-BX-2009-005) (establishing the Extranet Access Fee on BX); and 71841 (April 1, 2014), 79 FR 19129 (April 7, 2014) (SR-BX-2014-015) (notice of filing and immediate effectiveness clarifying that the Extranet Access Fee is \$750).

Configuration. As noted, this proposal indicates the same fee as NASDAQ Rule 7025, namely \$1,000 per CPE Configuration, and adds to section VIII of the Pricing Schedule verbatim clarifying language from NASDAQ Rule 7025. As proposed, section VIII of the Pricing Schedule will read as follows: “Extranet providers that establish a connection with the Exchange to offer direct access connectivity to market data feeds shall be assessed a monthly access fee of \$1,000 per recipient Customer Premises Equipment (“CPE”) Configuration. If an extranet provider uses multiple CPE Configurations to provide market data feeds to any recipient, the monthly fee shall apply to each such CPE Configuration. For purposes of this rule, the term “Customer Premises Equipment Configuration” shall mean any line, circuit, router package, or other technical configuration used by an extranet provider to provide a direct access connection to Exchange market data feeds to a recipient’s site. No extranet access fee will be charged for connectivity to market data feeds containing only consolidated data. For purposes of this rule, consolidated data includes data disseminated by the UTP SIP. Extranet providers that establish a connection with PSX pursuant to this section VIII of the Pricing Schedule as well as a connection with Phlx pursuant to section XIII of the Pricing [sic] Schedule shall be assessed a total monthly access fee of \$1,000 per recipient CPE Configuration.” The proposal thus conforms section VIII of the Pricing Schedule to NASDAQ Rule 7025, and makes them substantively identical.<sup>8</sup> The proposal also makes it clear that if an extranet provider establishes an Extranet connection for equity business (PSX) as well as its options business, the extranet provider will not need to pay a double \$1,000 monthly access fee, but rather only one total monthly access fee of \$1,000.

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<sup>8</sup> The Exchange notes that while section VIII of the Pricing Schedule and NASDAQ Rule 7025 each contain some language particular to the relevant exchange, with this proposal the language of the two rules is substantively identical.

The modified proposed Extranet Access Fee will, as on NASDAQ, be used to help recoup the Exchange's costs associated with maintaining multiple extranet connections with multiple providers. These costs include those associated with overhead and technology infrastructure, administrative, maintenance and operational costs. Since the inception of Extranet Access there have been numerous network infrastructure improvements and administrative controls enacted. Additionally, the Exchange has implemented automated retransmission facilities for most of its data clients that benefit extranet clients by reducing operational costs associated with retransmissions.<sup>9</sup>

As the number of extranets has increased, the management of the downstream customers has expanded and the Exchange has had to ensure appropriate reporting and review processes, which has resulted in a greater cost burden on the Exchange over time. The proposed fee will also help to ensure that the Exchange is better able to closely review reports and uncover reporting errors via audits thus minimizing reporting issues.<sup>10</sup> The network infrastructure has increased in order to keep pace with the increased number of products, which, in turn, has caused an increased administrative burden and higher operational costs associated with delivery via extranets.

Thus, subsequent to the proposal extranet providers that establish a connection with the Exchange to offer direct access connectivity to market data feeds shall be assessed a monthly access fee of \$1,000 per CPE Configuration. If, as discussed below, an extranet provider uses

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<sup>9</sup> Also, the Exchange is currently undergoing a technology refresh of the its options trading system, which will deploy state-of-the-art hardware and software architecture to achieve a more efficient and more robust infrastructure in support of the growing needs of our customers.

<sup>10</sup> The Exchange will inform extranet providers of their reporting responsibilities via its public web site.

multiple CPE Configurations to provide market data feeds to any recipient, the monthly fee shall apply to each such CPE Configuration.

The Exchange proposes two new clarifications to conform the language of section VIII of the Pricing Schedule to that of NASDAQ Rule 7025. Specifically, the Exchange proposes to indicate that if an extranet provider uses multiple CPE Configurations to provide market data feeds to any recipient, the monthly fee shall apply to each such CPE Configuration; and that no extranet access fee will be charged for connectivity to market data feeds containing only consolidated data. For purposes of this rule, consolidated data includes data disseminated by the UTP SIP. These proposed clarifications should serve to reduce any confusion as to the applicability of the Extranet Access Fee. Moreover, the clarifications would make the Exchange's Extranet Access Fee in section VIII work the same as the equivalent fee in NASDAQ Rule 7025, and complete the effort to conform the two rules.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act,<sup>11</sup> in general, and with section 6(b)(4) of the Act,<sup>12</sup> in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the Exchange operates or controls.

The Exchange believes that its proposal to amend the Extranet Access Fee in section VIII of the Pricing Schedule, and to clarify the applicability of the Extranet Access Fee and thereby conform the fee with the equivalent fee on NASDAQ, is consistent with the Act.

All similarly situated extranet providers, including the Exchange operating its own extranet, that establish an extranet connection with the Exchange to access market data feeds

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<sup>11</sup> 15 U.S.C. 78f.

<sup>12</sup> 15 U.S.C. 78f(b)(4).

from the Exchange are subject to the same fee structure. The fee will help the Exchange to offset some of the rising overhead and technology infrastructure, administrative, maintenance and operational costs it incurs in support of the service.

If such costs are covered, the service may provide the Exchange with a profit. As such, the Exchange believes that the proposed fee is reasonable and notes that this proposal represents the first change of the Extranet Access Fee since its introduction. The extranet costs are separate and different from the colocation facility that is able to recoup these fees by charging for servers within the associated data centers. Additionally, the Exchange believes that the proposed change is equitable and not unreasonably discriminatory. The monthly fee is assessed uniformly to all extranet providers that establish a connection with the Exchange to offer direct access connectivity to market data feeds, and is the same for all at \$1,000 per recipient CPE Configuration. Thus, any burden arising from the fees is necessary in the interest of promoting the equitable allocation of a reasonable fee. Moreover, firms make decisions on how much and what types of data to consume on the basis of the total cost of interacting with the Exchange or other markets and, of course, the Extranet Access Fee is but one factor in a total platform analysis.

Additionally, section VIII of the Pricing Schedule will be clarified by stating that if an extranet provider uses multiple CPE Configurations to provide market data feeds to any recipient, the monthly fee shall apply to each such CPE Configuration; and that no Extranet Access Fee will be charged for connectivity to market data feeds containing only consolidated data, which for purposes of this rule includes data disseminated by the UTP SIP. This clarification should serve to reduce any confusion as to the applicability of this fee.

The proposal provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the Exchange operates or controls, and is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

The proposed fees are applied uniformly among extranet providers, which are not compelled to establish a connection with the Exchange to offer access connectivity to market data feeds. For these reasons, any burden arising from the fees is necessary in the interest of promoting the equitable allocation of a reasonable fee. Additionally, firms make decisions on how much and what types of data to consume on the basis of the total cost of interacting with the Exchange or other exchanges and, of course, the Extranet Access Fee is but one factor in a total platform analysis.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Pursuant to section 19(b)(3)(A)(ii) of the Act,<sup>13</sup> the Exchange has designated this proposal as establishing or changing a due, fee, or other charge imposed by the self-regulatory organization on any person, whether or not the person is a member of the self-regulatory organization, which renders the proposed rule change effective upon filing.

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<sup>13</sup> 15 U.S.C. 78s(b)(3)(A)(ii).



At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

##### Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-Phlx-2014-81 on the subject line.

##### Paper comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-Phlx-2014-81. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications

relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-Phlx-2014-81, and should be submitted on or before [INSERT DATE 21 DAYS FROM PUBLICATION IN THE FEDERAL REGISTER].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>14</sup>

Brent J. Fields,  
Secretary.

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<sup>14</sup> 17 CFR 200.30-3(a)(12).